IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 297of 2000.

Judgement reserved on: 24.8.2007

Date of decision: 1.10.2007.

State of H.P. .…….Appellant

Vs.

Jai Singh & another . Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr. M.L. Chauhan, Additional Advocate General .

For the Respondents : Mr. K.D. Sood, Advocate.

Kuldip Singh, Judge.

1. The State is in appeal against judgment dated 20.12.1999 passed by learned Addl. Chief Judicial Magistrate, Mandi in Case No.58-III of 94. The respondents were prosecuted for having committed offence under Sections 32, 33, 41 and 42 of the Indian Forest Act. It has been alleged that on 28.1.1994 truck No.HIE 1537 was stopped by Nika Ram Forest Guard and on checking it was found carrying 52 bags of charcoal, each bag weighing 30 Kg., 33 sleepers of deodar, 3 sleepers of kail. The truck was being driven by respondent Ram Dev and Jai Singh respondent was sitting with him in the truck. The respondents were asked to produce the documents

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

for carrying timber and charcoal but they could not produce. It was found that respondents were transporting charcoal, deodar and kail sleepers without any export permit during night. Damage report Ex.PW-1/A was prepared, truck along with charcoal and sleepers were taken to range office Panarsa. DFO, Mandi was informed and the truck was unloaded at Sale Depot, Mandi Forest Division. The respondents allegedly confessed having committed offence vide Ex.PW-1/C. During investigation one tree of Deodar was found to have been cut from Khasra No.8 D.P.F Sakroha. After completion of investigation respondents were challaned, notice of accusation was put to the respondents under Sections 32, 33, 41 and 42 of the Indian Forest Act., who pleaded not guilty. The prosecution has examined nine witnesses. The respondents in their statements under Section 313 Cr.P.C. denied the case of the prosecution and pleaded their innocence. They did not lead any evidence in defence. The learned Addl. Chief Judicial Magistrate acquitted the respondents on 20.12.1999, hence State is in appeal.

2. I have heard the learned counsel for the parties and gone through the record. The learned Addl. Advocate General has submitted that the Court below has misconstrued, misinterpreted the material on record. The prosecution has proved its case beyond reasonable doubt. The respondents have confessed the offence. The learned Addl. Chief Judicial Magistrate has wrongly acquitted the respondents. The learned counsel for the respondents has supported the impugned judgment and has submitted that prosecution has

miserably failed to prove the case. The respondents have been falsely implicated in the case. The learned Addl. Chief Judicial Magistrate has taken a possible view from the material on record.

3. PW-1 Nikka Ram, Forest Guard has stated that during the intervening night of 27/28.1.1994, he stopped truck No.HIE 1537 by giving signal and it was found carrying charcoal and timber. Ram Dev respondent was driving the truck and Jai Singh was sitting in the truck. They could not produce any document for transporting charcoal and timber. Jai Singh told that truck was carrying 50 bags of charcoal and 32 sleepers. He prepared damage report Ex.PW-1/A which is signed by him. The truck was parked there. At Mandi depot 52 bags of charcoal and 36 slippers were unloaded from the truck on 29.1.1994. The details were written vide Ex.PW-1/B on the reverse of damage report Ex.PW-1/A. The respondents signed confessional statement Ex.PW-1/C. In cross-examination he has stated that there were 5/6 persons in the truck but he could not tell their names.

4. PW-2 Lal Chand Forest Guard has stated that in his presence only charcoal and timber was given on sapurdari and he is not aware of other proceedings. PW-3 Kirti Singh, Dy. Range Officer has stated that damage report was prepared by Forest Guard. In cross-examination he has stated that there was one person in the truck but he is not aware of his name. He has shown his ignorance whether owner of the truck was driving the vehicle at the time of occurrence.

5. PW-4 Amin Chand Jaswal, Junior Assistant of the office of DFO, Mandi has placed on record notification Ex.PW-4.A but in cross-examination he has stated that he does not have any record to show that this notification was circulated in vernacular in the area. PW-5 Het Ram has stated that in truck No.HIE 1537 there were 52 bags of charcoal and 36 sleepers. The truck was intercepted at about 1 a.m. during night. Jai Singh respondent was not on the spot when truck was intercepted. He did not sign any paper during night.

6. PW-8 Karam Chand has denied that on 28.1.1994 at about 1 a.m. any truck loaded with charcoal and timber was intercepted. He was declared hostile and cross-examined by the prosecution. PW-9 Gulab Chand, retired, Range Officer came to the spot later on and he is not an eye witness to the occurrence.

7. PW-1 Nika Ram has stated that he prepared damage report Ex.PW-1/A. As per Ex.PW-1/A about 50 bags of charcoal and 32 Deodar sleepers of different sizes were found. On checking, vide Ex.PW-1/B writing on the reverse of damage report Ex.PW-1/A, 52 bags of charcoal and 36 sleepers were recovered from the truck. There is difference in quantity of charcoal bags and sleepers when the truck was intercepted and checked on 28.1.1994 and when it was unloaded on 29.1.1994. The signatures of respondents on joint confessional statement Ex.PW-1/C have not been proved. PW-1 has stated in cross-examination that there were 5/6 persons in the truck but he could not tell their names. The respondents have denied their

involvement in the case, who were those 5/6 persons and why they were not challaned has not been explained by prosecution.

8. PW-3 Kirti Singh has stated that there was one person in the truck but he is not aware of his name. The confessional statement Ex.PW-1/C has been allegedly witnessed by PW-5 Het Ram and PW-8 Karam Chand. But PW-5 Het Ram has stated that Jai Singh respondent was not on the spot when the truck was intercepted nor he signed any paper during night. PW-1 Nika Ram has stated that he prepared damage report Ex.PW-1/A when the truck was intercepted and respondents made their confessional statement Ex.PW-1/C. PW-8 Karam Chand has denied that on 28.1.1994 at about 1 a.m. any truck was intercepted which was loaded with charcoal and timber. He was declared hostile. The truck was intercepted at about 1.a.m. on 28.1.1994 but was unloaded on 29.1.1994 and at that time charcoal bags and timber, sleepers were counted. There are material contradictions in the prosecution story as noticed above. in There is no clinching evidence on record that right from 1.a.m. on 28.1.1994 and till charcoal bags and sleepers were unloaded on 29.1.1994 the truck along with loaded material remained in safe custody and no tempering was done with the loaded material. There is no evidence of circulation of notification under Sections 32,33 read with Sections 30 and 31 of the Indian Forest Act, 1927 in vernacular in the locality. It has also come on record that Jethu owner of the truck was there at night when the truck was checked. There is no evidence that the tree was cut in D.P.F.

Sakroha by respondents. The learned Addl. Chief Judicial Magistrate has rightly appreciated the material on record and has taken a possible view. The prosecution has failed to bring home the charge against the respondents, no case for interference has been made out.

9. The result of the above discussion, the appeal is dismissed.

(Kuldip Singh)
Judge.

October 1 , 2007
(sks)